Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
@Communications, Inc.,	)	CC Docket No. 02-4
	)	
	)	
Petition for Declaratory Ruling	)	

COMMENTS OF AT&T CORP.

In accordance with the Commission's Public Notice released January 18, 2002,[1] AT&T Corp. ("AT&T") submits these comments concerning the Petition for Declaratory Ruling (the "Petition') filed by @Communications, Inc. ("@Communications"). In the Petition, @Communications requests that the Commission affirm that its rules require incumbent LECS to bear the cost of transporting their originating traffic to the CLEC-designated point of interconnection ("POI") between the ILEC's and the CLEC's networks.

AT&T supports this request. Indeed, the facts here[2] graphically demonstrate why the Commission must promptly and clearly enforce its existing rules. Although @Communications, in full compliance with the Commission's rules, initially designated a single POI within a LATA, Sprint – in its role as an ILEC – refused to deliver traffic to this interconnection point, and has thereby delayed competitive entry by @Communications for over 12 months. Faced with this ILEC-created logjam, and –like most CLECs – anxious to begin providing service over its facilities, @Communications then chose to forego its rights under the Act and offered to designate multiple POIs within the LATA at Sprint's tandems. Sprint likewise refused to agree

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1 *Public Notice*, CC Dkt. No. 02-4, DA 02-164 (rel. Jan.18, 2002).

2 AT&T assumes for purposes of these comments that the facts alleged in the Petition are accurate.

to this arrangement. In fact, Sprint refuses to agree to any interconnection arrangement that does not require @Communications to interconnect in every Sprint local calling area or to assume the cost of transporting Sprint's local originating traffic to Sprint's tandems.

Enough is enough. The Commission should promptly and convincingly confirm that its rules mean what they say. The Commission therefore should reaffirm that CLECs are entitled to designate a single POI within a LATA, that ILECs must bear the cost of transporting their originating traffic to this CLEC-designated POI, and that ILECs must reimburse CLECs for the costs of terminating this ILEC-originated traffic.

ARGUMENT

Both the Telecommunications Act of 1996,[3] and the Commission's rules establish that CLECs are entitled to designate a single POI within a LATA, that ILECs must bear the cost of transporting their originating traffic to this CLEC-designated POI, and that ILECs must reimburse CLECs – through reciprocal compensation – for the costs of terminating this ILEC-originated traffic. Such requirements are absolute prerequisites to effective facilities-based competition. As the Commission acknowledged in the *Local Competition Order*,[4] section 251(c)(2) of the Act was designed to help rein in ILEC exploitation of their market power by giving competing carriers "the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on the network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points,"[5] (such as at every ILEC central office in each local calling area). Section 251(c)(2) of the Act thus "lowers barriers to

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[3] 47 U.S.C. §151 *et seq.* (the "Act").

[4] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd. 15499 (1996) ("*Local Competition Order*").

[5] *Id.* at ¶ 209.

competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic." *Id.*

Since 1996 the Commission has consistently applied section 251(c)(2) and its implementing rules to prevent ILECs from increasing CLECs' costs by requiring multiple POIs (or imposing costs on CLECs that would amount to the same thing). The Commission's rules thus mandate that ILECs permit CLECs to interconnect with their networks at "any technically feasible point" within the ILEC's network. 47 C.F.R. § 51.305(a). As the Commission emphasized in its *Texas 271 Order*:[6]

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA. *(citing Local Competition Order* ¶¶ 172, 209).[7]

The federal courts have followed the Commission's lead and rejected as inconsistent with section 251(c)(2) incumbents' efforts to require competing carriers to establish POIs in each local calling

6 *Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, 15 FCC Rcd. 18354 (2000) ("*Texas 271 Order*") ¶ 78.

7 The Commission made a similar pronouncement in its subsequent Order granting in-region interLATA authority to SWBT for Kansas and Oklahoma. *Joint Application by SBC Communications Inc., et al. for Provision of In-region, interLATA service in Kansas and Oklahoma,* Memorandum Opinion and Order, 16 FCC Rcd. 6237 (2001) (*Kansas/Oklahoma 271 Order*), ¶ 235. Similarly, in an *amicus* brief filed with the United States District Court for the District of Oregon, the Commission urged the court to reject U S WEST's argument that the Act requires a competing carrier to "interconnect in the same local exchange in which it intends to provide local service," stressing that "[n]othing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition." *U S WEST Communications v. AT&T Communications of the Pacific Northwest, et al.*, Civ. 97-1575-JE, Brief of the Federal Communications Commission as Amicus Curiae, at 20.

area.[8] The vast majority of state commissions[9] likewise support the principle that it is the CLEC, and not the ILEC, that has the right to choose the POI locations.

Thus, the Act and the Commission's rules empower the CLEC as the requesting carrier – and not the ILEC – to select the POI, and with good reason. Incumbent LECs have strong incentives to establish inefficient interconnection points to raise their potential rival's costs and deter competitive entry. Here, for example, Sprint's refusal to recognize @Communications' rights under both the Act and the Commission's rules has caused a delay of over 12 months in the provision of competitive services.[10] This delay continues even after @Communications went beyond what is required under the Act and offered to establish multiple POIs within the LATA (*i.e.*, at each of Sprint's tandems). Unless the Commission promptly and conclusively enforces

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8 *See e.g., US West Communications v. Minnesota Public Utilities Comm'n, et al.,* No. 55 F.Supp.2d 968, 982-83 (D. Minn. 1999) (affirming right of a requesting carrier to interconnect with the incumbent at any technically feasible point); *US WEST Communications v. Hix, et al.,* No. C97-D-152, 2000 WL 33672937 (D. Colo. 2000) (reversing a state Commission's order that a CLEC must establish an interconnection point in every local calling area and holding that under the Act and the FCC regulations, "it is the CLEC's choice, subject to technical feasibility, to determine the most efficient number of interconnection points, and the location of those points"); *US West Communications v. AT&T Communications of the Pacific Northwest, et al.,* No. C97-1320R, 1998 WL 1806670 (W.D. Wash. 1998) (affirming that AT&T may establish a single interconnection point within each LATA and rejecting ILEC contention that a CLEC must have an interconnection point in every local calling area in which is offers service).

9 *See e.g.* Decision, *Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Company, Inc. d/b/a/ Ameritech Indiana Pursuant to Section 252 (b) of the Telecommunications Act of 1992,* Cause No. 40571-INT-03 at 19; (Nov. 2001); Opinion, *Application of AT&T Communications of California (U5002C), et al., for Arbitration of an Interconnection agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996,* No. 00-01-022, p. 13 (CA PUC Aug. 3, 2000); Order Addressing and Affirming Arbitrator's Decision No. 5, *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996,* p. 3, 4, 9 (Aug. 7, 2000); Decision of Arbitration Panel, *AT&T Comm'ns of Michigan Inc. and TCG Detroit's Petition for Arbitration,* Case No. U-12465 (Oct. 18, 2000) at 4, 19.

its existing rules, new entrants will be effectively barred from providing competitive facilities-based services, either because ILECs will refuse to enter into interconnection agreements or because CLECs will be forced to adopt impractical and inefficient network architectures that mirror the incumbent LEC's network.

The Commission's rules also require that each LEC bear the cost of transporting its originating traffic to the POI. Commission Rule 51.703(b) thus prohibits a LEC from "access[ing] charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b). The Commission emphasized as recently as April 2001 that "under [its] current rules, the originating telecommunications carrier bears the costs of transporting traffic to its point of interconnection with the terminating carrier."[11] In the instant situation, it is therefore clear that Sprint must bear the cost of transporting its traffic to the POI designated by @Communications, so long as that POI is within the LATA, and correspondingly, that an ILEC violates the Act if it refuses to interconnect with a CLEC or insists on shifting this cost burden to the CLEC.[12]

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[10] Petition at 6.

[11] *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC No. 01-92 (rel. Apr. 27, 2001) ¶ 70.

[12] State commissions have consistently found that each party should be financially responsible for delivering its traffic to a POI – even if it is a single POI within a LATA. See Order, *Generic Proceeding on Point of Interconnection and Virtual FX Issues,* Docket No. 13542-U, at 3, 5-6 (Ga. PSC Order, August 20, 2001);Order, *Joint Petition of AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecommunications Corp. Pursuant to Section 252 (b) of the Telecommunications Act of 1996 for Arbitration to establish an Interconnection Agreement with Verizon New York, Inc.,* Case 01-C-0095 *(July 30, 2001);*Final Order, *Petition by AT&T Communications of the Southern States, Inc. d/b/a/ AT&T for Arbitration of Certain terms and conditions proposed by Bell South Telecommunications, Inc. pursuant to 47 U.S.C. Sec. 252*, Dkt. No. 000731-TP at 34-46 (June 28, 2001); *Bell Atlantic Interconnection Tariff*, D.T.E. 98-57 at 132-133 (March 24, 2000); *MediaOne/Bell Atlantic Arbitration,* D.T.E. 99/42/43, 99-52 at 12-13 (March 24, 2000).

With respect to terminating traffic, the Act requires each LEC to "establish reciprocal compensation arrangements for transport and termination of telecommunications," which compensation must provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." 47 U.S.C. §§ 251(b)(5); 252(d)(2)(A)(i).

These provisions establish that the originating LEC must pay reciprocal compensation to the terminating LEC, and that the POI between the two networks marks the point at which this compensation obligation begins. The Act thus precludes ILECs from receiving reimbursement for costs they incur to deliver calls that they *originate* to the POI. Indeed, as shown above, the plain language of Commission Rule 51.703(b) bars compensation for a LEC's costs incurred in originating local calls:

> A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

At bottom, incumbent LECs, such as Sprint in this instance, wish to treat their networks as establishing the efficiency "baseline" and suggest that because competitive LECs employ a different network architecture (one that uses fewer switches and longer loops),[13] competitive LECs "cause" increased transport costs. But, it is equally true that increased transport costs borne by competitive LECs are "caused" by the incumbent LECs, because they chose to design their local networks differently than competitive LEC networks. In actuality, neither network

[13] Deployment of transport facilities by CLECs requires the expenditure of substantial fixed costs. The deeper into the ILEC network that the CLEC must build the smaller the volume of traffic carried by each individual facility, and, consequently, the higher the unit costs. This is particularly problematic because ILEC's employ many more switches than CLECs to serve a comparable geography. Instead, CLECs generally rely on relatively fewer switches and longer transport links. New entrants simply do not have sufficient traffic volumes to justify the building of transport facilities to each and every incumbent central office or local calling area in a LATA.

should be viewed as the "baseline." Rather, it is the interconnection of *both* networks to one another that creates additional costs that neither would bear if interconnection were not required.

The Act and the Commission's rules recognize that there is simply no one-size-fits all solution to interconnection point decisions. Interconnection points that may be efficient in a particular area for carriers with certain volumes of traffic, may not be efficient in other areas or at other volumes of traffic. Consistent with the Act, the Commission's existing rules permit competitive LECs to tailor their POI decisions in order to deploy the most efficient network, taking into account local conditions.

CONCLUSION

As set forth above, incumbent LECs have a statutory duty to provide interconnection "at any technically feasible point" within their networks. 47 U.S.C. § 251(c)(2). The Commission has long held that CLECs are entitled to designate a single POI per LATA, that each LEC is responsible for its costs in delivering its originating traffic to the designated POI, and that LECs must establish reciprocal compensation arrangements that provide for the mutual and reciprocal recovery by each carrier of costs associated with terminating the traffic of a requesting carrier.[14]

The Commission therefore should promptly and convincingly reaffirm that ILECs may not demand that CLECs establish additional POIs (or pay transport charges as if the CLEC had) as the price of reaching an interconnection arrangement. Because such an

[14] *See, e.g., Kansas/Oklahoma 271 Order* ¶ 235:

> Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network. These rules also require that an incumbent LEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier. (footnotes omitted).

onerous requirement would either interfere with a CLEC's statutory right to designate the point of interconnection or require the CLEC to reimburse the ILEC for the ILEC's costs of originating ILEC traffic, it is foreclosed by the Act.

Respectfully submitted,

AT&T CORP.

/s/ Stephen C. Garavito

Mark C. Rosenblum
Stephen C. Garavito
Teresa Marrero
Room 1131M1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8100

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CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich, do hereby certify that on this 19th day of February, 2002, a copy of the foregoing "Comments of AT&T Corp." was served by US first class mail, postage prepaid, on:

W. Scott McCullough
David Bolduc
Stumpf Craddock Massey & Pulman
1801 North Lamar Boulevard
Austin, Texas 78701

/s/ Theresa Donatiello Neidich
Theresa Donatiello Neidich